UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

BEACON SALES ACQUISITION, INC. d/b/a QUALITY ROOFING SUPPLY COMPANY	)	Cases 4-CA-36952
	)	4-CA-37107
	)	4-CA-37120
	)	4-CA-37209
	)	4-CA-37304
	)	4-CA-37306
And	)	4-CA-37377
	)	4-CA-37378
	)	4-CA-37433
	)	4-CA-37438
	)	4-CA-37456
	)	4-CA-37548
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, AFL-CIO.	)	4-CA-37536
	)	4-CA-37841
	)	4-CA-37885 and
	)	4-CA-37943

PETITION TO REVOKE TRIAL SUBPOENA
TO QUALITY'S CHAIRMAN OF THE BOARD ROBERT R. BUCK

Petitioner, Beacon Sales Acquisition, Inc. d/b/a Quality Roofing Supply Company ("Quality"), pursuant to Sections 102.31(b) and 102.113 of the NLRB Rules and Regulations, respectfully files this Petition to Revoke Subpoena No. A-898353 served by the Union seeking the testimony of Robert R. Buck, who is the Chairman of the Board of Directors of Quality's parent company, Beacon Roofing Supply, Inc. As shown below, this subpoena was not properly served on Mr. Buck and lacked the necessary witness fees. Further, even if the subpoena had properly been served and had the required witness fees, it is a blatantly vexatious litigation tactic intended only to harass Quality by seeking the testimony of its parent company's top corporate official, who the Union well knows has no connection whatsoever to this case. The Union's abusive, frivolous litigation tactics should not be countenanced, and the Subpoena should be revoked.

INTRODUCTION

On May 2, 2011 - only eight calendar days before the start of the hearing in this matter - Robert R. Buck, who is Chairman of the Board of Directors of Quality's parent company, Beacon Roofing Supply, Inc. ("Beacon"), and had previously been its CEO and Chairman from March 1, 2007 until January 1, 2011, received at his McLean, Virginia home via regular U.S. mail a partial photocopy of subpoena no. A-898353.[1] Ex. 1 - Declaration of Robert Buck, ¶¶ 1-2, Attachment A. No witness fee was included with the photocopy of the subpoena. *Id.* ¶ 2. This subpoena seeks Mr. Buck's testimony on May 13, 2011, on which his attendance as a Director is required at another company's Board of Directors meeting in Cincinnati, Ohio. *Id.* ¶ 6.

The attached flyer was being distributed by the Union in Mr. Buck's neighborhood on or about April 22, 2011. *Id.* ¶ 3, Attachment B. This Union-issued flyer was but the latest in a series of such flyers that have been distributed in Mr. Buck's neighborhood in recent years as part of the Union's attempt to harass and embarrass Mr. Buck.[2]

As is readily apparent from the Third Consolidated Complaint (*see e.g.*, Paragraph 4), and the absence of a subpoena from the General Counsel seeking his testimony, Mr. Buck has no conceivable connection to this case. He was not involved in the collective bargaining or any of the decisions that comprise this case, has no firsthand knowledge of these matters, and has never even met or spoken with any Union officials. *Id.* ¶ 4.

Nonetheless, the Union's counsel informed undersigned counsel and Judge Rosas during a conference call that Mr. Buck's testimony is necessary based on a purported "Corporate and/or

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1 All but the first line of the Privacy Act Statement was cut-off from the photocopied subpoena.

2 *See* flyers attached at *Id.*, Attachment C.

Board of Directors Policy" which supposedly exists and which prohibits union-represented employees at Quality from receiving better or even different wages and benefits than non-union employees. First, the Union has been advised on several occasions both at the bargaining table and in correspondence that Quality has no such "corporate policy" which effects the wages and benefits about which Quality is negotiating with the Union. (Ex. 2, Declaration of Ross D. Cooper and Ex. 3, Declaration of Jennifer Thomas).

Second, in October 2009, the Union requested that Quality furnish the Union with this alleged "corporate policy" and then filed an unfair labor practice (Case No. 4-CA-37107) for failing to do so. Quality informed the Region (as it has informed the Union on numerous occasions) that there was no such policy, and the Region dismissed that portion of the Charge on December 31, 2009. *See* Ex. 4 - ULP Charge in 4-CA-37107 (3rd allegation); Ex. 5 - Quality's 11/2/09 Letter to the Region in Response to the ULP Charge in 4-CA-37032, pp. 6-7; Ex. 6 - Region's 12/31/09 Letter Dismissing the ULP Charge in 4-CA-37107; Ex. 7 - 1/6/10 Quality Letter to the Union Reiterating the Non-Existence of any such Policy; Ex. 8 - 11/19/10 Quality Letter to the Union Reiterating the Non-Existence of any such Policy, p. 3; Ex. 9 - 3/4/11 Quality Letter to the Union Reiterating the Non-Existence of any such Policy, p. 1. Finally, Mr. Buck, the Chairman of the Board of Quality's parent company, expressly denies the existence of any such policy and that there was any policy which prevented Quality from paying union workers more than non-union workers. *See* Ex. 1, ¶ 5.

APPLICABLE LAW

NLRB Rules and Caselaw. Section 102.113 (c) of the NLRB's Rules & Regulations provides that "[s]ubpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served." Subpoenas issued by parties other than the

General Counsel are to be accompanied by witness fees at the time of service. NLRB Casehandling Manual § 11778.

A subpoena is properly revoked if the evidence requested does not relate to any matter under investigation, the subpoena does not describe with sufficient particularity the evidence required, or the subpoena is invalid for any other reason sufficient in law. *Co-Jo Inc., d/b/a Clinton Food 4 Less*, 288 N.L.R.B. 597, 618-19 (1988) (revoking subpoena for personnel file documents on relevance and annoyance, embarrassment and oppression grounds); *Brink's Inc.*, 281 N.L.R.B. 468, 468-69 (1986) (revoking subpoena seeking, *inter alia*, information unrelated to the matters in question); NLRB R&R § 102.31(b); Board Casehandling Manual § 11782.

The Federal Rules of Civil Procedure. Under Rule 26 of the Federal Rules of Civil Procedure, discovery may be limited if "the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive . . ." Fed. R. Civ. P. 26(b)(2)(i). Where the testimony of a high-ranking corporate official would serve no legitimate discovery purpose, courts have not hesitated to deny such testimony to the party seeking it. *See Bush v. Dictaphone Corp.*, 161 F.3d 363, 367 (6th Cir. 1998) (affirming denial of motion to depose a senior company officer where there was no evidence that he had involvement in or knowledge of conduct giving rise to the action). Such a situation exists where the corporate executive does not possess knowledge of the circumstances surrounding the case at issue. *See Id.*; *see also Harris v. Computer Assocs. Int'l,* 204 F.R.D. 44 (E.D.N.Y. 2001) (noting that "[d]epositions of high level corporate executives may be duplicative, cumulative and burdensome where the person sought to be deposed has no personal knowledge of the events in dispute.").

Further, the Advisory Committee notes to Rule 45 of the Federal Rules of Civil Procedure state that compelling an adversary to attend a hearing even though it is known that the adversary has no personal knowledge of the dispute constitutes an undue burden. Advisory Committee notes to the 1991 Amendments to Fed. R. Civ. P. 45(c). Therefore, in order to compel the deposition of a high-ranking company official, even if she or he is a decisionmaker in the involved decisions, which is not even the case here, the movant must prove that the decisionmaker has "unique personal knowledge" of the matter at issue. *Community Federal Sav. & Loan Ass'n v. FJLBB*, 96 F.R.D. 619 (D.D.C. 1983).

The taking of testimony should also be prohibited where a less burdensome source, who has equal or greater knowledge than the corporate executive, is available to testify. *Thomas v. Int'l Bus. Machs.*, 48 F.3d 478, 483 (10th Cir. 1995) (issuing protective order where plaintiff sought deposition of Chairman of the Board of Directors and made no showing that information sought from him could not have been gathered from other, less burdensome sources). In *Thomas*, the court held, *inter alia,* that a protective order was warranted because the record did not reflect that the corporation failed to make available for deposition the plaintiff's direct supervisors who made the decisions regarding plaintiff's employment, the Chairman had no knowledge of the plaintiff, and to submit to a deposition would cause him severe hardship. *Id.* *See also M.A. Porazzi Co. v. The Mormaclark*, 16 F.R.D. 383, 383 (S.D.N.Y. 1951) (holding that because the executive "could contribute nothing beyond that which would be gleaned from an examination" of the lower-ranked employee (who possessed personal knowledge of the events giving rise to the action), there was "a showing of good cause that the deposition of the [executive] should not be taken"); *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 334 (M.D.A.L. 1991) (denying the deposition of an executive who lacked "superior or unique personal

knowledge" of the issues, and noting that a court is authorized to limit discovery of an executive when "the discovery sought 'is obtainable from some other source that is more convenient, less burdensome, or less expensive'" in part because an executive is "'a singularly unique and important individual who [could] be easily subjected to unwarranted harassment and abuse.'" (citations omitted)); *Sharma v. Lockheed Engineering & Mgmt. Servs. Co, Inc.*, 862 F.2d 314, **3 (4th Cir. 1988) (finding that "[g]iven the absence of specific knowledge by [the company president] and the access to other sources of discovery," the district court was justified in issuing a protective order).

ARGUMENT

The instant subpoena is fatally flawed, both procedurally and substantively, and should immediately be revoked.

I. The Subpoena Should Be Revoked Because It Was Not Properly Served And Lacked the Necessary Witness Fee

The Subpoena is plainly improper by virtue of it not being served in accordance with NLRB Rule & Regulation 102.113(c). There is no provision for serving a subpoena, not to mention serving only a photocopy of a subpoena in which part of the Privacy Act Statement has been cut-off, by regular mail sent to the potential witness's home. Yet, this is exactly what the Union did here. Nor is a party other than the General Counsel entitled to omit the required witness fees when serving a subpoena, as the Union has done in this instance. In short, the Union has made absolutely no effort to comply with the NLRB's subpoena service requirements; which not only renders the Subpoena invalid, but further demonstrates the vexatiousness and illegitimacy of the Union's tactics.

II. Even If Properly Served With The Required Witness Fee, The Subpoena Should Be Revoked Because It Is At Best Duplicative, Cumulative and Burdensome Of Other Testimony To Be Provided, And Is Nothing More Than A Continuation Of The Union's Campaign To Harass And Embarrass Mr. Buck and Quality

Even had it met the NLRB's subpoena requirements in this instance (which plainly it did not), the Union cannot hope to satisfy the strict standards for compelling the testimony of the Chairman of Quality's parent company. Mr. Buck has no unique or superior knowledge regarding the matters comprising this case. In fact, he has no firsthand knowledge of any of these matters, having not been involved in the collective bargaining and employment decisions involving fewer than twenty employees at one of Beacon's many subsidiary companies. He has not even met anyone from the Union.

In contrast, the various Quality representatives named in the Third Consolidated Complaint have such knowledge; which no doubt is why the General Counsel has not subpoenaed Mr. Buck. As such, there simply is no legitimate basis to require Beacon's Chairman of the Board to take time away from his busy schedule, including a Board of Directors meeting in Cincinnati, Ohio on the day the Union wants him to testify, to try to testify on matters about which he lacks any direct knowledge, much less the requisite unique or superior knowledge.

This conclusion is bolstered by the Union's proffered reason for seeking to depose Mr. Buck - his supposed knowledge of a non-existent policy that allegedly prohibited Quality from agreeing on a collective bargaining agreement with the Union. This contention amply demonstrates the Union's flagrant abuse of the NLRB's subpoena power in seeking to depose Beacon's Chairman. When this issue was raised at the bargaining table, Quality's chief negotiator told the Union that no such policy existed. The Union also specifically alleged back in October 2009 that Quality's purported refusal to produce the non-existent corporate policy

was an unfair labor practice, only to have the Region reject this contention and dismiss this portion of the Union's Charge. The Union has nonetheless repeatedly sought information and documents regarding this non-existent policy from Quality (obviously refusing to acknowledge the Region's dismissal of the above Charge), and repeatedly been told by Quality that there is no such policy. And, of course, the Third Consolidated Complaint in this case contains no allegations having anything to do with this alleged policy or any representation by Quality regarding the existence of any such policy; thus further demonstrating the Subpoena's invalidity. Simply put, there is no legitimate basis for the Union to seek Mr. Buck's testimony regarding this purported policy that he has confirmed does not exist. *See* Ex. 1 ¶ .

Finally, it is important to note that this Subpoena is but the latest transgression in the Union's long-running campaign of harassment and embarrassment against Mr. Buck and Quality; a campaign that has included distributing flyers containing personal attacks on Mr. Buck and other Quality officials in their respective neighborhoods over the past years, dozens of meritless unfair labor practice charges, and countless other abuses. *See e.g.*, Ex 1. Attachments B and C. The Union no doubt will continue its attack on Quality and its various officials, and Quality will have to fend for itself as it has for the past four years. In this particular instance, however, the NLRB's rules and applicable caselaw do not allow the Union to bully Quality by forcing Mr. Buck to travel to Philadelphia to testify about a non-existent policy or other matters on which he has no knowledge. Accordingly, the Subpoena must be revoked.

CONCLUSION

For the foregoing reasons, the Subpoena should be revoked.

Respectfully submitted,

BEACON SALES ACQUISITION, INC.
D/B/A QUALITY ROOFING SUPPLY COMPANY

By: Peter Chatilovicz

Peter Chatilovicz
Taron K. Murakami

Seyfarth Shaw LLP
975 F Street, NW
Washington, DC 20004
(202) 463-2400
(202) 828-5393 (facsimile)

Date: May 6, 2011

CERTIFICATE OF SERVICE

This is to certify that a true copy of the Petition to Revoke Subpoena was served via electronic mail this 6th day of May, 2011 upon:

Dorothy L. Moore-Duncan
Regional Director
National Labor Relations Board - Region 4
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Jennifer Roddy Spector
Field Attorney
National Labor Relations Board - Region 4
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Lou Agre, Esq.
International Union of Operating Engineers, Local 542 AFL-CIO
1375 Virginia Drive, Suite 100
Fort Washington, PA 19034

Frank Bankard
International Union of Operating Engineers, Local 542 AFL-CIO
1375 Virginia Drive, Suite 100
Fort Washington, PA 19034

Peter Chatilovicz

Ex. 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

BEACON SALES ACQUISITION, INC. d/b/a QUALITY ROOFING SUPPLY COMPANY	)	Cases 4-CA-36952
	)	4-CA-37107
	)	4-CA-37120
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	)	4-CA-37433
	)	4-CA-37438
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, AFL-CIO.	)	4-CA-37456
	)	4-CA-37548
	)	4-CA-37577
		4-CA-37884
		4-CA-37885

DECLARATION OF ROBERT R. BUCK

I, Robert R. Buck, swear and affirm as follows:

1. I am the Chairman of the Board of Directors of Beacon Roofing Supply, Inc., which is the corporate parent of Beacon Sales Acquisition, Inc. d/b/a Quality Roofing Supply Company ("Quality"). I have held this position since January 1, 2011. From March 1, 2007 through January 1, 2011, I was CEO and Chairman of the Board. I am making this Declaration in support of Quality's petition to revoke a subpoena seeking my testimony in the above-captioned matter.

2. I received the attached photocopy of subpoena no. A-898353 (Attachment A) via regular U.S. Mail on May 2, 2011 at my home address in McLean, Virgina. I did not receive this document at my place principal office or place of business. I have not received an original of the subpoena or any witness fee.

3. The attached flyer (Attachment B) was distributed in my neighborhood on Friday, April 22. This is but one of many flyers (Attachment C) that the union has distributed in my neighborhood over the years in an effort to harass me and embarrass me before my neighbors.

4. I have no first hand knowledge of the allegations against Quality in this case. I am not now and never have been involved in Quality's collective bargaining with

International Union of Operating Engineers, Local 542, AFL-CIO. I have never met or spoken with any union official.

5. I understand that the union contends that my testimony is necessary to describe an alleged "Corporate and/or Board of Directors Policy" at Quality and/or Beacon to not pay union workers any greater or different wages or benefits than non-union workers. There is not now, nor has there ever been, any such corporate or Board of Directors policy.

6. On the date on which my testimony is being sought in the attached subpoena - May 13, 2011 - I am scheduled to be in Cincinnati, Ohio to attend a long-previously set meeting of the Board of Directors of a public company on whose Board I have sat for years.

I solemnly swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 6, 2011

Robert R. Buck

Att. A

FORM NLRB-32
(12-07)

SUBPOENA

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Robert Buck

As requested by International Union of Operating Engineers, Local 542

whose address is 1375 Virginia Dr. Ste. Washington, PA 19034
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

of the National Labor Relations Board

at 615 Chestnut St. 7th Fl

in the City of Philadelphia, PA

on the 13 day of May 20 11 at 10 (a.m.) (~~p.m.~~) or any adjourned

or rescheduled date to testify in Beacon Sales d/b/a Quality Roofing Case 4-CA-36952 et al
(Case Name and Number)

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

A - 898353

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Philadelphia, Pennsylvania

this 1st day of March 20 11

Lester A. Heltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to

Att. B

ON TRIAL MAY 10th!

Bob Buck of Swinks Ct.

When Bob was CEO of Beacon Roofing he allowed dozens of hideous Acts by lower management against his workers. Bob hid from his workers in this luxurious community. Now Beacon Roofing's Hideous Acts will be tried in a Federal Hearing!

Is Bob a great neighbor or an exploiter of those less fortunate?

Distributed International Union of Operating of Operating Engineers, Local 542

Att. C

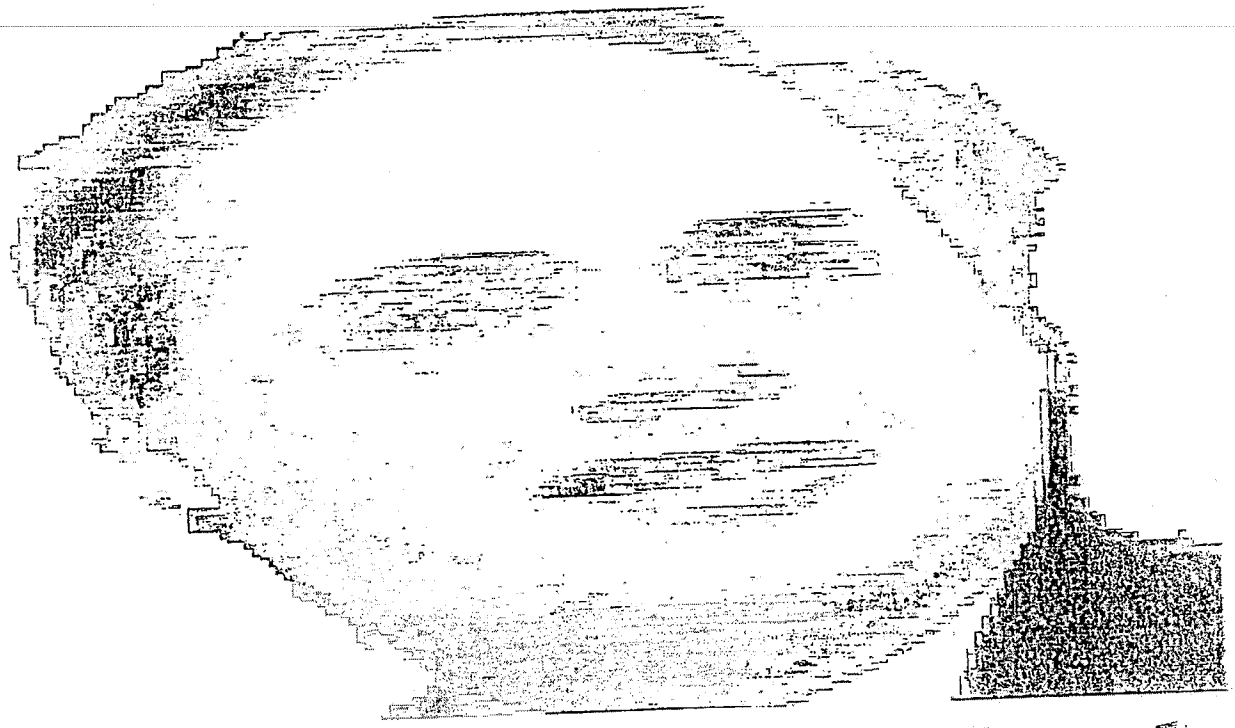
Chairman of the Board of Corruption!

That's your Neighbor Bob Buck of Swinks Ct.

As Chairman of Beacon Roofing, Bob allows his surrogates to exploit his work force illegally.

Distributed International Union of Operating of Operating Engineers, Local 542

He took from a Sick Kid!



Your Neighbor Bob Buck of Swinks Ct.

While Bob and Susan Buck live in their spacious Mansion taking in more than $1.5 million a year in income, his company, Quality Roofing, took a $500.00 year-end bonus from an employee with a sick child.

WHAT A CREEP!

Distributed International Union of Operating of Operating Engineers, Local 542

ONE BAD EMPLOYER

Equals one bad neighbor!

Bob Buck of Swinks Ct.

Bob Bucks Company Appeal to the Federal Government has now been denied!

International Union of Operating of Operating Engineers, Local 542

NEW HOME FOR YOUR NEIGHBOR

Bob Buck?

The Federal Government is now investigating more Contempt allegations as a result of labor law violations which directly involve your neighbor of Swinks Ct..

Distributed by the International Union of Operating Engineers Local 542

Law Violator!

How do you spend your day at work? Your Neighbor Bob Buck of 7614 Swinks Ct. spends his by preparing for Federal Contempt Charges!

Distributed by the International Union of Operating Engineers Local 542

BEWARE

SWINE GREED

It can be a job killer to anyone who works for your neighbor's Company and who exercises their rights under federal labor law.

Ask Bob Buck of 7614 Swinks Ct.

Distributed by the International Union of Operating Engineers Local 542

If Charles Dickens was alive today

Bob Buck of Swinks Ct. would be Scrooge in his Christmas Carol!

Your Neighbor Bob Buck, CEO of Beacon Roofing has been personally involved in violating his workers Rights under Federal Law!

Violations so severe, that the Company had to enter into a Federal Court Order monitoring his Company's Actions.

Now Bobs' Company is being looked at for Contempt! Bob is the True Scrooge of the Holidays!

Happy Holidays, distributed by the International Union of Operating Engineers Local 542

BOB BUCK of Swinks Ct!

Neighbor
Husband
Father
Or
Just a Corporate Turkey!

Happy Thanksgiving from the International Union of Operating Engineers Local 542

Oink! Oink!

While your Neighbor Bob Buck of 7614 Swinks Ct, CEO of Beacon Roofing, jams millions into his own pockets each year, his Company thinks that 50 cents an hour is too much to give 14 of his workers so they can get decent Health Care for their families!

Distributed by the International Union of Operating Engineers Local 542

If Charles Dickens was alive today

your neighbor Bob Buck of Swinks Ct. could give real meaning to his Christmas Carol!

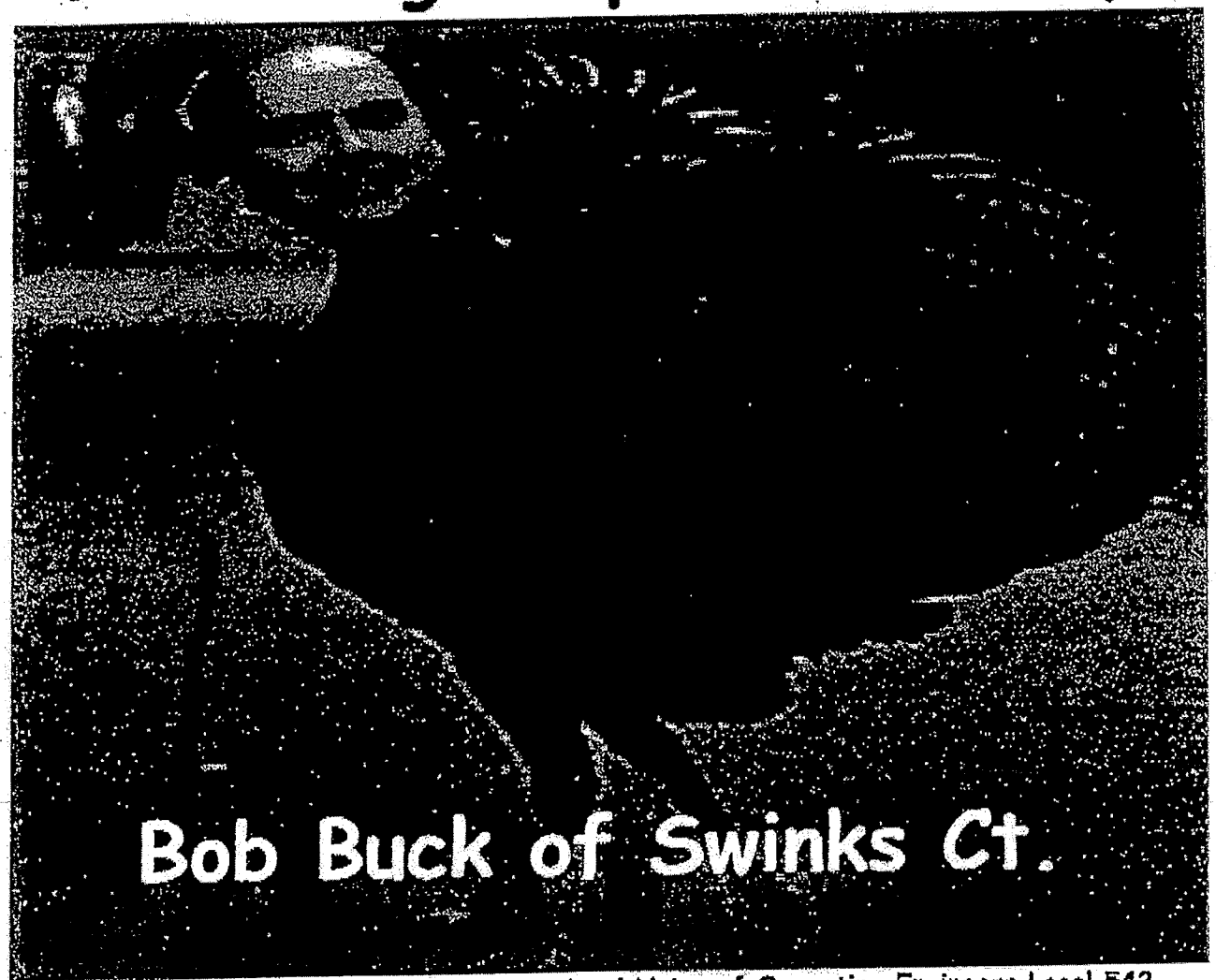
Bob Buck, CEO of Beacon Roofing last month denied Annual/Christmas Bonuses to his workers!

Last year Bob Buck tried the same deplorable act but the Federal Government made him pay it back.

Ebenezer Scrooge even paid Bob Cratchet what he was owed! Hopefully the ghost of Christmas past will enlighten Bob on his ruthless ways!

Happy Holidays, distributed by the International Union of Operating Engineers Local 542

Neighbor
Husband
Father
Or
Just a Big Corporate Turkey!



Happy Thanksgiving from the International Union of Operating Engineers Local 542

STILL DON'T HAVE A COSTUME FOR HALLOWEEN?

HOW ABOUT GOING AS A CEO CREEP?

Last week your Neighbor Bob Buck of 7614 Swink Ct. got levied with 7 more Federal Charges! That brings the total to 19 for this year.

Some of these Complaints stem directly from his decision to take money from his workers!

Distributed by the International Union of Operating Engineers Local 542

When You're a Labor Law Breaker! No Day is Peaceful!

A Day in New York City for your neighbor Bob Buck, CEO of Beacon Roofing!

You think he'll be welcomed back?

Distributed by the International Union of Operating Engineers Local 542

WANTED

Robert Buck

CEO - Beacon Roofing

For Offenses Against The Working Class!

Stealing Nickels off a Dead Mans Eyes!

Just what kind of people live in this Neighborhood?

Your Neighbor Bob Buck is CEO of Beacon Roofing. While Bob makes millions, his Company continues to commit allegedly illegal actions against its workers, the latest being an unauthorized deduction of $22.00 out the weekly pay check of one of its employees. This employee's take home pay was just $217.99! Now $22.00 may not seem a lot to you in this wealthy neighborhood, but for an employee bringing home only 200 bucks it is!

The Federal Government has issued numerous complaints alleging that the Company headed by your Neighbor Bob Buck has violated federal law!

While Bob and Susan Buck of Swink Ct. live a lavish lifestyle, is it derived from these types of actions?

Distributed by the International Union of Operating Engineers Local 542

How Did You Make Your Millions?

Was it through honest hard work?
Or cheating workers out of Annual Bonuses?

Your Neighbor Bob Buck, of Swinks Ct., is CEO of Beacon Roofing. Beacon Roofing has been found by the Federal Government to have unlawfully taken a $350.00 annual bonus from its workers this past year.

This small bonus has been given since long before Bob became CEO of Beacon Roofing. Bob received a bonus of $180,000 last year while these employees who make an average of $40,000 a year were unlawfully denied their bonus!

A Hearing is set by the Federal Government in October on this matter along with numerous other complaints against the Company that your Neighbor Bob Buck heads!

As in the Book of Matthew: *And again I say unto you, It is easier for a camel to pass though the eye of a needle, than for a rich man to enter into the kingdom of God.*

Distributed by the International Union of Operating Engineers Local 542

Your Neighbor Bob Buck of 7614 Swinks Ct.

A Pillar to this Community
or
Just a Common Lawbreaker?

Your neighbor Bob Buck is the CEO of Quality Roofing Supply. His Company tried to take away a days pay which was earned by one of its employees.

A Local District Judge had to order your Neighbor's Company to pay this employee what was rightfully owed.

We ask you what kind of low life lives in this Neighborhood?

What kind of person would take a days pay from a working man?

Distributed by the International Union of Operating Engineers Local 542

ON TRIAL MAY 10th!

Bob Buck of Swinks Ct.

When Bob was CEO of Beacon Roofing he allowed dozens of hideous Acts by lower management against his workers. Bob hid from his workers in this luxurious community. Now Beacon Roofing's Hideous Acts will be tried in a Federal Hearing!

Is Bob a great neighbor or an exploiter of those less fortunate?

Distributed International Union of Operating of Operating Engineers, Local 542

Ex. 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

BEACON SALES ACQUISITION, INC. d/b/a QUALITY ROOFING SUPPLY COMPANY And INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, AFL-CIO.	)	Cases 4-CA-36952 4-CA-37107 4-CA-37120 4-CA-37209 4-CA-37304 4-CA-37306 4-CA-37377 4-CA-37378 4-CA-37433 4-CA-37438 4-CA-37456 4-CA-37548 4-CA-37577 4-CA-37884 4-CA-37885

DECLARATION OF ROSS D. COOPER

I, Ross D. Cooper, swear and affirm as follows:

1. I am the Sr. Vice President, General Counsel & Secretary of Beacon Roofing Supply, Inc., which is the corporate parent of Beacon Sales Acquisition, Inc. d/b/a Quality Roofing Supply Company ("Quality"), and co-counsel to Quality in this case. I have held this position at Quality since July 1, 2006. From the certification of the bargaining units in this case through November 1, 2011, I was Quality's lead bargaining agent. I am making this Declaration in support of Quality's petition to revoke a subpoena seeking the testimony of Quality's Chairman of the Board.

2. I understand that the union contends that Mr. Buck's testimony is necessary to describe an alleged "Corporate and/or Board of Directors Policy" at Quality and/or Beacon to not pay union workers any greater or different wages or benefits than non-union workers. There is not now, nor has there ever been, any such corporate or Board of Directors policy, nor did I ever tell the Union that there is or was.

3. The Union previously has asserted that I advised of the existence of this alleged policy and several times requested that Quality provide it. The record is replete with letters that I wrote to the union denying both that I ever advised of the existence of this policy or that one existed. The union then filed an unfair labor

practice (Case No. 4-CA-37107) for Quality's alleged failure to produce the alleged policy. Quality informed the Region that there was no such policy, and the Region dismissed that portion of the Charge on December 31, 2009.

I solemnly swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 6, 2011

Ross D. Cooper

Ross D. Cooper

Ex. 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

BEACON SALES ACQUISITION, INC. d/b/a QUALITY ROOFING SUPPLY COMPANY And INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542, AFL-CIO.	)	Cases 4-CA-36952 4-CA-37107 4-CA-37120 4-CA-37209 4-CA-37304 4-CA-37306 4-CA-37377 4-CA-37378 4-CA-37433 4-CA-37438 4-CA-37456 4-CA-37548 4-CA-37577 4-CA-37884 4-CA-37885

DECLARATION OF JENNIFER THOMAS

I, Jennifer Thomas, swear and affirm as follows:

1. I am staff counsel at Beacon Roofing Supply, Inc., which is the corporate parent of Beacon Sales Acquisition, Inc. d/b/a Quality Roofing Supply Company ("Quality"), and co-counsel to Quality in this case. From January 1, 2010 to the present, I have attended all collective bargaining sessions. I am making this Declaration in support of Quality's petition to revoke a subpoena seeking the testimony of Quality's Chairman of the Board Robert R. Buck.

2. I understand that the union contends that Mr. Buck's testimony is necessary to describe an alleged "Corporate and/or Board of Directors Policy" at Quality and/or Beacon to not pay union workers any greater or different wages or benefits than non-union workers. There is not now, nor to my knowledge has there ever been, any such corporate or Board of Directors policy, nor did I ever tell the union that there is or was.

I solemnly swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 6, 2011

Jennifer Thomas

Ex. 4

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
4-CA-37107	10-19-09

INSTRUCTIONS

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of workers employed
Quality Roofing	

c. Address *(street, city, state, ZIP code)*	d. Employer Representative	e. Telephone No.
5244 River Road, Second Floor, Bethesda, MD 20816	Ross Cooper	301-272-2124

f. Type of Establishment *(factory, mine, wholesaler, etc.)*	g. Identify principal product or service
roofing supply	roofing supply

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

1. From the period between February 10, 2009 through July 7, 2009, the Employer engaged in surface bargaining with the Union.

2. On or about July 20, 2009 by correspondence, the Union requested information from the Employer, including Employee disciplinary records. The Employer has refused to provide this information.

3. During a collective bargaining session on July 7, 2009, the Union requested a copy of the Employer's "Corporate Policy" which allegedly prevented it from reaching an agreement with the Union. The Employer has refused to provide a copy of that policy.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*	4b. Telephone No.
International Union of Operating Engineers Local 542, AFL-CIO	215-542-7500

4a. Address *(street and number, city, state and ZIP code)*

1375 Virginia Drive, Suite 100, Fort Washington, PA 19034

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

International Union of Operating Engineers, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By	Title
ROBERT F. HENNINGER *(Signature of representative or person making charge)*	ATTORNEY

Address	Telephone No.	Date
1650 MARKET STREET, 51ST FLOOR PHILADELPHIA, PA 19103	(215) 735-9099	October 19, 2009

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Ex. 5

Quality Roofing Supply Company, Inc.
Wholesale Distributor of
Commercial & Residential Building Products

November 2, 2009

VIA FACSIMILE AND
OVERNIGHT COURIER

Jennifer Roddy Spector, Esq.
Field Attorney
National Labor Relations Board, Region 4
615 Chestnut Street
Philadelphia, PA 19106

Re: Quality Roofing Supply Company
Case No.: 4-CA-37032

Dear Ms. Spector:

Quality Roofing Supply Company ("Quality") respectfully responds to your October 14, 2009 letter requesting information in response to the above-referenced Charge. As explained below, Quality has not declared impasse in its bargaining with Local 542, International Union of Operating Engineers ("Union"), although given that the parties' numerous good faith bargaining sessions resulted in agreement-in-principle on **all** issues except for a small financial gap of about $.55/hour per worker in health care contributions, on which neither side would budge, Quality would be justified in declaring impasse, especially after the Federal mediator assigned to the case announced his belief that impasse had been reached. However, as you have seen from the correspondence on which you have been copied, Quality has offered to continue to bargain with the Union.[1]

The only reason that bargaining has not occurred is that the Union has rejected Quality's numerous good faith attempts to schedule bargaining sessions. In a transparent effort to bully Quality into accepting its demands, the Union has refused to return reasonably to the bargaining table, and instead has resumed its pre-Formal Settlement

[1] At this time, Quality is willing to accept at face value the Union's assertion that it desires to bargain in good faith over alternatives to the health care portion of the contract in an effort to close the small gap that exists between the parties. If, after bargaining, it is clear that the Union is not bargaining in good faith and/or is simply resuming its use of bargaining sessions to verbally abuse Quality and its bargaining team with no sincere effort to reach agreement, Quality believes that the law would not require further meetings.

tactic of demanding after-hours bargaining sessions at each of the bargaining unit sites. In the totality of the circumstances, Quality's refusal to accede to these bullying efforts is not bad faith, a conclusion that is supported both by Board case law and our January, 2009 discussions with the Division of Advice. As a result, the Charge should be dismissed.

Before turning to your specific information requests, we believe that it is important to review the context in which this Charge arises. Bargaining between Quality and the Union began in late 2007, shortly after certification of the bargaining units.[2] At the outset, bargaining sessions were held in several locations in Center City Philadelphia: (i) at 30th Street Station; (ii) at a union hall downtown Philadelphia; and (iii) at several offices rented by Quality from various Center City law firms.

Once it became apparent that Quality would not accede to the Union's demands, the Union, through its bargaining agents Frank Bankard and Lou Agre, openly threatened to "make life difficult" for Quality or words to that effect. See Declaration of Jeff Metz, Exhibit A at ¶ 3. Among the many tactics employed by the Union was to demand that separate bargaining sessions take place at Quality's branches or the Union's suburban union hall in Fort Washington, Pennsylvania and that the bargaining sessions begin at 4-5 p.m., ostensibly to allow bargaining unit employees to attend without missing work. See, e.g., Letter from Ross D. Cooper to Frank Bankard dated February 18, 2008, Exhibit B. The Union rebuffed Quality's offer to provide unpaid leave for bargaining unit employees to attend bargaining sessions in Center City. Id.

The Union's strategy was quite transparent: because Quality's counsel is located in Washington, D.C, by insisting upon bargaining at the suburban locations, and well into the night, the Union could make bargaining burdensome, inefficient and expensive for Quality. The disingenuousness of the Union's demand for site-specific bargaining was amplified by the Union's own offer of identical contract proposals for each of the four branches, laying bare the Union's assertion that separate contracts needed to be negotiated for each branch. This point is well documented in our prior bargaining submission, dated August 8, 2008, and our submission to the Division of Advice dated November 21, 2008, which we incorporate by reference herein and urge you to review.

Despite the Union's obvious goal to harass and bully Quality, in the spring of 2008, the undersigned and other Quality officials conducted bargaining sessions at Quality's North Wales and York facilities. These bargaining sessions began in the late

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[2] The Union represents 3-4 employees at four of Quality's branches for a total of approximately fifteen bargaining unit members.

afternoon and proceeded into the early evening. These sessions were highly unproductive, resulted in no differing proposals by the Union, and simply provided an opportunity for Mr. Bankard to deride profanely the undersigned counsel and Quality's efforts to bargain to a contract. Mr. Bankard's repeated and consistent use of profanity, his verbal derision of undersigned counsel's children, and his overall unprofessional conduct is also well documented in our prior submissions. This conduct is quite consistent with Mr. Bankard's general reputation, which Quality understands is well known within your Region. Indeed, we understand that Mr. Bankard's modus operandi is to bully, harass and make bargaining and responding to Unfair Labor Practice Charges so expensive for employers that they decide to concede rather than to adhere to their bargaining positions. Indeed, in a July 9, 2009 e-mail to the undersigned (copied to Regional Counsel), Mr. Bankard bragged about his willingness to protract disputes, even at the expense of his own worker's jobs. See Exhibit C (last paragraph discussing 5-year battle with Hanson Aggregates that cost "98%" of the workers their jobs).

Given the Union's actions and the parties' respective intractable positions on several core issues, Quality determined in May 2008 that further meetings would be unproductive. This resulted in a bad faith bargaining Charge. In our meetings both with your office and the Division of Advice in connection with this Charge, it became clear to Quality that the Division of Advice believed that the parties had not had a sufficient opportunity to test each other's respective contract positions in collective bargaining. The Division of Advice re-affirmed, however, that Quality **was not** obligated to forego its bargaining position on the economics of a contract, so long as it operated in good faith **in an attempt to** reach agreement. As a result, Quality expressed a willingness to return to the bargaining table under reasonable circumstances, which included meeting at reasonable times and locations. This point was expressly addressed in our meetings both with your office and with the Division of Advice, as was Quality's unwillingness to subject itself to repeated and consistent verbal assaults and use of profanity by Mr. Bankard and his colleagues.

As a result of both parties' willingness to return to the bargaining table under reasonable circumstances, and to avoid the expense of lengthy Board hearings, in early 2009, the parties entered into the Formal Settlement, the so-called Non-Board Settlement and two "Interim" settlement agreements and resumed bargaining. The stated intent of the agreements was to "clean the slate" and allow bargaining to resume before a Federal mediator. See E-Mail Dated February 13, 2009 from Peggy McGovern to Ross Cooper and Mike Viccora, Exhibit D.

Over the course of bargaining, which took place both in Center City, Philadelphia and Washington, D.C. before a Federal mediator at FMCS offices, the parties reached agreement in principle on how to handle hourly wages, retirement contributions, union

security, dues deductions, seniority, layoff, recall, work hours, lunch breaks, overtime, vacation, holidays and all the other terms and conditions of employment, including a creative non-binding mediation procedure and the union's right to strike, where appropriate.

Bargaining sessions took place on January 22, February 10, February 27, March 20, April 15, May 4, May 28, June 16 and July 7, 2009. Although Mr. Bankard attended the bargaining sessions, the Union's lead negotiator was Mike Grant, who the Union represented would be the business agent with day-to-day responsibility for Quality once a contract was signed. Metz Dec. at ¶ 4. Importantly, the Union's (and Mr. Bankard's) tone and demeanor during these sessions were markedly different than in the past. The Union officials became cordial and professional, and did not deride Quality or its representatives or direct profanity at Quality or its bargaining team. Id. Both sides made major concessions from their 2008 positions in reaching agreement on the terms set forth above. Id.

On May 1, 2009, the Company provided the Union a comprehensive contract proposal that memorialized the parties' tentative agreements on the above terms. Exhibit E. At the May 4 bargaining session, the Union stated that it agreed with most of the proposal provided by the Company and the parties discussed some "tweaks" to the contract language, which the Company memorialized and passed to the Union at the May 28 bargaining session. Exhibit L; Metz Dec. at ¶ 5. At the May 28 session, the Union raised no concerns with any of the provisions in the contract. Id. Indeed, it was at the May 28 session that the parties agreed that the **only** issue that remained was the amount of the Company's contribution to the Union health care plan. Id. At that session, both parties agreed that the "gap" was approximately $1,700 per month or approximately $.55 per hour per worker over the three percent 2009 wage increase that Quality offered in its proposal (actually Quality calculated the difference to be $.58/hour per man and the Union calculated it to be $.52/hour per man; both sides would later agree that it was $.55/hour per man). Id.[3]

At the conclusion of the May 28 session, the Union initially refused to schedule another meeting, declaring that there was nothing left to discuss and that the Union was prepared to "go back to war" or words to that effect. Metz Dec. at ¶ 6. The Union threatened to discourage Quality's customers from buying from Quality. Id.

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[3] Mr. Bankard's July 9 e-mail, Exhibit C, also admits the approximate $.50/hour/worker gap. Mr. Bankard's August 27 letter made very clear that only "pennies" separated the parties from a signed contract. Exhibit F.

At Quality's urging and after the mediator's intercession, a bargaining session was scheduled for and held on June 16. Metz Dec. at ¶ 7. The discussion on June 16 focused on the health care cost differential as the parties explored ways to close the gap. Id. The Union suggested that if Quality increased its contribution, then the Union would guarantee that the Union's cost would not increase until January 1, 2011. See E-Mail from Mike Viccora to Frank Bankard dated June 19, 2009, Exhibit G; Metz Dec. at ¶ 7.[4] This would enable Quality's contribution levels to "catch-up" to the Union's contribution requirement because it was presumed that Quality's contributions under its current company health care plan would increase each year. Id. Quality's position was quite clear at that meeting – it was not prepared to increase its financial offer. Id. At the conclusion of the meeting, the parties agreed to re-examine their respective positions and confer on whether another bargaining session would be productive. Id.

At the final bargaining session on July 7, 2009 -- the third session to focus predominantly on the $.55/hour/man health care gap -- Quality arrived to find Mr. Grant absent. Id. at ¶8. Mr. Bankard advised that Mr. Grant did not feel the need to attend because all that was left was the question whether Quality would increase its offer by the $.55/hour per man needed to bridge the gap. Id. According to Mr. Bankard, if Quality, agreed "we have a deal" and if not "we don't"; thus, Mr. Bankard said, Mr. Grant did not feel the need to attend. Id. When Quality would not alter its offer, the mediator announced that there was nothing left to discuss, and that additional meetings would not be productive in his view. Id. He even used the word "impasse" to describe the state of events. Id.

The bargaining session then adjourned. As the Union officials walked down the public hallway towards the elevators about 50 feet in front of Quality's representatives, Mr. Bankard stated in a clearly audible voice that Quality now "will spend more fighting" the Union than the $.55/hour man differential. Id. at ¶9. Since that time the Union has resumed its "death of a thousand cuts" strategy. It thus has filed several specious charges, breached the non-Board settlement agreement by resuming its attack of Quality's customers, and resumed its illegal hand billing of Quality's management at their homes. Exhibit H.[5]

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[4] The Union later would backtrack from this commitment when it became clear that Quality would not bridge the $.55/hour gap. However, contrary to the Union's allegation, at no time did the Union ever advise that its offer to freeze health care contribution levels expired in July, 2009. Metz Dec. at ¶ 8.

[5] The attached handbills are those that have been plastered all over the residential neighborhoods of both undersigned counsel and Quality's CEO. The poor taste, falsity and arguably illegal nature of these postings were discussed at length with the Division of Advice and further demonstrate the Union's bad faith. Adding to the Union's bad faith is

Before we turn to the recent exchanges on bargaining, we think it is important to address the Union's apparent fundamental misrepresentation to your office of Quality's financial offer. The Union apparently has indicated that Quality stated that its "policy" is to treat Quality's union and non-union employees identically. The Union complains that Quality has refused to produce this policy. No such policy exists, nor has Quality ever suggested that one does. Indeed, Quality's contract proposal affords the Union employees financial and non-financial benefits better than non-union employees. Perhaps most notably, Quality's wage offer includes 2009 wage increases (1) on the effective date of the Agreement (as opposed to their anniversary date) for employees who had not yet received their annual increase and (2) 2010 wage increases on January 1, which is accelerated from those for non-union employees, who in 2008 and 2009 received increases on their anniversary dates. See Contract Proposal, Exhibit E at Article 12 and Schedule A. Union employees would also receive a 4-hour guarantee for reporting to work as scheduled. Exhibit E at Article 10.4. As to non-financial matters, the Union employees would have the right to submit termination and suspension decisions to Federal mediation. Exhibit E at Article 11. In addition, Quality made quite clear that it would contribute more to the Union's health plan in exchange for wage concessions by the Union. Metz Dec. at ¶ 11. Simply put, and as we explained in great detail to the Division of Advice, Quality's bargaining position (not any policy) has been that the total labor expenses (wages, health care, pension, etc.) should be the same for Quality's union and non-union employees.

It is no secret that the root of this entire controversy is that the Union apparently over-promised Quality's employees that the Union would secure financial concessions allowing them to cover their Union dues and secure an overall compensation increase. The Union seriously miscalculated Quality's resolve in not granting the financial concessions it is seeking. The "gap" was $.55/hour/employee. That this one small financial issue is all that separated the parties from a contract creates the paradigm example of impasse and demonstrates conclusively that Quality fully discharged its obligation to bargain in good faith with the Union.

In any event, promptly after the Union expressed a desire to return to the bargaining table, Quality indicated that it was willing to meet with the Union, as it would

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its recent physical assault of one of Quality's customers on a picket line. A member of the Union sprayed pepper spray on an innocent passenger in a customer vehicle. The incident is the subject of a pending contempt petition in the Philadelphia state court proceeding that resulted in an injunction restricting the Union's picketing made necessary by prior instances of union violence.

accept at face value the Union's stated intention to propose alternative solutions to bridge the small financial gap between the parties. Indeed, at the July 7 session, Quality identified the August 5, 2009 date as available for such a meeting, and thereafter Quality has consistently expressed a willingness to meet. As explained above, however, the Union resumed its insistence that bargaining be after hours at the individual locations and has heretofore rebuffed Quality's written offers to resume meeting in Center City, Philadelphia. We refer to the correspondence set forth in Exhibit I as documenting Quality's willingness to bargain at reasonable times and places since the end of July 2009.[6] Against this backdrop, we now turn to the specific questions posed in your October 14 letter, which we reproduce verbatim in advance of our responses:

1) According to the Union, the parties met most recently for contract bargaining on July 7, 2009, and the following events, inter alia, transpired: Quality Roofing indicated that due to a "corporate policy" prohibiting spending more on one work unit's benefits than any other's, whether union-represented or unrepresented, it could not agree to the Union's healthcare plan. The Employer had never previously mentioned this policy as a basis for its bargaining position. The Union requested a copy of the corporate policy in question, and the Employer refused to provide it. The Union indicated that it would now need to bargain separate contracts for each facility, as under these circumstances a "global" contract for all locations was impossible, and that it no longer saw a need to meet with the federal mediator present. The Union proposed meeting next during the week of July 20, 2009, except July 22, and the Employer indicated it was unavailable until August 2009. Locations were not discussed. Are the facts recited above accurate? If not, in what way(s)?

Response: The facts above are not accurate. As explained above, there is not, nor has there ever been, a corporate policy of not spending more on benefits for union workers than non-union workers. As a result, there was no improper refusal to produce a copy of this policy.

As to bargaining, as set forth in our July 29 Position Statement on Case No. 4-CA-36879, the Union was bound contractually to meet in Center City, Philadelphia before the Federal mediator until early August, 2009. Quality was willing to meet but the members of its bargaining team **and the Federal mediator** were not available together

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[6] As explained below and in our July 29, 2009 Position Statement on Case No. 4-CA-36879, the Union was obligated contractually to bargain before the Federal mediator until early August, 2009. Thus, our willingness to meet elsewhere in Philadelphia did not become necessary until after August 5, 2009, but our willingness to bargain at reasonable places and times since August 5 has been consistent.

until August 5. Quality's attempted scheduling of that bargaining session was entirely consistent with how the parties previously had scheduled bargaining sessions under the Interim Agreement. This Union's complaint is but another example of how it tried to harass and bully Quality by insisting on bargaining sessions inconsistent with the parties' established practice.

2) According to the Union, it had notified the Employer well in advance that it was offering a reduced price with respect to its health insurance plan, which was only available for a limited time (through June 30, 2009, with an extension obtained to July 7, 2009), and is now off the table. Thus, principally but not exclusively because of healthcare, it must now bargain a separate contract for each bargaining unit. Previously, its employee representation on its committee consisted of two laid-off employees (one each from Eddystone and Yeadon), who are now ineligible for recall. Because of the need for separate contracts, it requires employee representation from each location, and must be able to accommodate the work schedules and transportation needs for these employees. What is the Employer's position with respect to these issues?

Response: The recitation of the Union's position is inconsistent with what the Union represented at the bargaining table. First, the Union never characterized its health care proposal as a "discount." Metz Dec. at ¶ 8. Second, the Union never indicated that the so-called discount expired in July. Id. To the contrary, the Union expressly offered to freeze its rates through December 31, 2011 to allow the Company's contribution to catch-up. Id.

The Union has indicated in recent correspondence that it no longer is offering its health plan and would like to discuss health care issues. This has nothing to do with whether there must be on-site, after-hours bargaining. Each bargaining unit performs the same work and is covered by the same health insurance plan and thus necessarily has the same heath-care coverage issues.

Also, the Union has misrepresented that its position is that there are no laid-off employees eligible for recall that can assist with bargaining. Both Dom Brown and Arnold Harris are on layoff, have participated in bargaining in the past and have contractual rights to recall based upon the parties' settlement agreement. Moreover, in recent correspondence the Union has taken the position that Brian Sheaffer also is eligible for recall. See Exhibit J. Thus, the Union has its full complement of laid-off bargaining-unit employees who can participate in bargaining.

Moreover, because Quality does not take the position that it can dictate who will participate in bargaining, Quality has offered to provide unpaid leave for a bargaining unit member from each branch to attend business-hour bargaining in Center City, and to pay for transportation costs. Exhibit K. Thus, there is no reasonable impediment to continued good faith bargaining in Center City pursuant to the parties' past practice.

3) According to the Union, the Employer has refused to meet except in a single date and location, during working hours, for all four bargaining units (i.e., the Employer is unwilling to meet and bargain in separate locations for the separate bargaining units). According to the Union, the Employer has offered to meet only in Philadelphia, Washington, DC, or York, PA, and bargain each unit separately, but in back-to-back sessions. The Union asserts that it has offered to meet at separate locations near each facility, or to meet at the York, PA facility for that facility, and at its hall in Ft. Washington, PA for the other three. The Union asserts that the Employer's position creates a hardship for employee members of its committees, and that it has expressed this to the Employer. Are the facts recited above accurate? What is the Employer's position with respect to bargaining location(s) and time(s), and what case law would you cite in support of your position?

Response: The Union's facts are inaccurate and belied by the correspondence to which we refer you at Exhibit I. In the totality of the circumstances, Quality's refusal to meet only at the bargaining unit location and after-hours is consistent with Board case law and our discussions with the Division of Advice. See e.g., In re Silver Bros Co., Inc., 312 NLRB 1060 (1993). In Silver Bros., the Union contended that the employer was acting in bad faith by refusing to meet at the Union hall instead of the neutral hotel (the "Koala Inn") where the parties had been conducting their bargaining sessions. The employer initially agreed to bargaining at the Union hall but changed its mind, asserting that the neutral site was the better location and consistent with the parties' past practice. The Board affirmed the Administrative Law Judge's ruling that the employer did not act in bad faith by refusing to bargain at the Union hall. The Administrative Law Judge correctly held that the Board looks to the "totality of the circumstances" in determining whether the employer is acting in bad faith by refusing to meet at the union's location. The ALJ held that the employer was making ardent efforts to bring the union to the table, and that the union's insistence on a location that was "anathema" to the employer "was a red herring to avoid resuming negotiations." Id. at 1068-69. Here, like the employer in Silver Bros., Quality has offered to continue to meet in places that the Union has found acceptable in more than 10 past bargaining sessions. Indeed, it can hardly be disputed that the parties have been most productive and have made the most significant progress toward reaching a contract during their bargaining sessions held in Philadelphia (and Washington, DC). Quality also has offered many suggestions on how to accommodate the Union's proffered need to have bargaining unit employees present, including giving

the Union employees leave and paying for their transportation costs. Here, as in Silver Bros., the totality of the circumstances make clear that the Union's insistence on after-hours, multi-location bargaining is a "red herring" to avoid facing the consequences of the single issue that has separated the parties from a contract. As a result, Quality's position is not in bad faith and the Charge should be dismissed.

4) **According to the Union, by letters dated July 8 and August 3, 2009, the Employer has declared that it believes the parties to be at "impasse." It is the Union's position that it had indicated repeatedly that its healthcare plan would only be on the table through July 7, 2009 at the latest, but that it remained more than willing to bargain and consider any other proposal with respect to healthcare thereafter; thus, the Union disputes any finding of impasse. Please provide the Employer's position with respect to impasse, including whether such declarations are evidence of bad faith bargaining or can constitute independent violations of the Act.**

Response: As explained above, Quality has not declared impasse, although it would be well within its rights to do so. Quality has repeatedly and consistently made clear its willingness to meet to discuss health insurance or any other proposals the Union would like to submit. See Exhibit I. Quality stands ready to meet with the Union at reasonable times and places and believes that the Union's insistence on after-hours bargaining at the separate suburban sites is unreasonable under both Board precedent and our discussions with the Division of Advice.

For the reasons set forth above, Quality respectfully submits that the Charge should be dismissed.

Respectfully submitted,

Ross D. Cooper

Ex. 6

United States Government

NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658

December 31, 2009

Ross Cooper, Esquire
Quality Roofing, Inc.
5244 River Road, Second Floor
Bethesda, MD 20816

Re: Quality Roofing, Inc.
Cases 4–CA–37032, 4–CA–37107
and 4–CA–37120

Dear Mr. Cooper:

This is to advise you that I have approved the Charging Party's request to withdraw the allegations of the charge in Case 4–CA–37107 that the Employer engaged in surface bargaining and refused to provide a "corporate policy" connected with its bargaining position. I have also approved the Charging Party's request to withdraw the allegations of the charge in Case 4–CA–37120 that the Employer violated Section 8(a)(4) of the Act by refusing to meet and bargain to retaliate against the Union for its filing of previous unfair labor practice charges, and that the Employer violated Section 8(a)(5) of the Act by refusing to bargain. All other allegations of Cases 4-CA-37107 and 4-CA-37120 remain pending. Finally, I have approved the Charging Party's request to withdraw Case 4-CA-37032 in its entirety.

Very truly yours,

Daniel E. Halevy

DANIEL E. HALEVY
Acting Regional Director

cc:

Frank Bankard, OrganizerInternational Union of Operating Engineers Local 542, AFL-CIO
1375 Virginia Drive, Suite 100, Fort Washington, PA 19034
Robert F. Henninger, Esquire, William T. Josem, Esquire, Cleary & Josem, LLP,
One Liberty Place, 51st Floor, 1650 Market Street, Philadelphia, PA 19103

Ex. 7

Quality Roofing Supply Company, Inc.

Wholesale Distributor of
Commercial & Residential Building Products

January 6, 2010

VIA ELECTRONIC MAIL ONLY

Frank Bankard
International Union of Operating Engineers, Local 542
1375 Virginia Drive, Suite 100
Fort Washington, Pennsylvania 19034

Re: Quality Roofing Supply ("Quality")

Dear Frank:

This responds to your New Year's Eve information request. As to the so-called "Corporate Policy," we repeatedly have indicated that no such policy exists and that we never indicated that one existed. The union's claims on this issue have been rejected by the Labor Board, so we do not feel compelled to address this issue any further.

As to the health care information, my letter to you dated October 13, 2009 provided the cost information for the 2010 health plans. In the spirit of cooperation, however, another copy is attached.

Attached are the 2010 health care selections for the bargaining unit members.

We will see you on January 11.

Sincerely,

Ross D. Cooper

enclosures

Ex. 8

November 19, 2010

Mr. Frank Bankard
International Union of Operating Engineers, Local 542
1375 Virginia Drive, Suite 100
Fort Washington, Pennsylvania 19034

Re: Quality Roofing Supply Company

Dear Frank:

Following our recent bargaining sessions on November 9th, 15th and 16th, we hereby memorialize the following:

We provided you with notice and an opportunity to bargain regarding the discrete annually occurring event of changes in Quality's benefit plans. Your position, reiterated several times at the table, is that the Union is not required to bargain this issue separate and apart from overall contract bargaining. Thus, the Union refused to make any proposals or bargain this issue. As a result, we will implement and within the next few days, will provide bargaining unit employees with information regarding open enrollment. These changes will go into effect January 1, 2011.

Also, during these sessions, on the subject of "overall" contract bargaining, we indicated to you that we believe we remain at impasse, having agreed in July 2009 after months of bargaining, to all terms of a collective bargaining agreement for all four units, except for the amount of money (approx $.55/hour/employee) that the Company would contribute to the Union's health care plan. Although our specific purpose in returning to the table was to address the annual occurring changes in benefits, we repeatedly encouraged you to make a move to break the impasse, which would necessitate resumption in overall bargaining. You had agreed to do this at the end of the mediation with Judge Giannasi in September 2010 by sending us full written proposals for each of the branches.

Rather than doing this, you provided us with a single proposal for Yeadon. Despite that in 2009 we agreed that all four units would be treated together in one contract, you now apparently want to have four separate contracts. We have no issue bargaining in that manner, so long as your proposals are not regressive. We believe that it would be helpful to have all of the proposals together, as it will be easier for us to

bargain one to conclusion if we have some idea of the union's position on the other branches.

In any event, upon our review of your Yeadon proposal, it was clear that it was entirely regressive in nature from the parties' agreement in 2009 with respect to both economic and non-economic terms. Although you denied the proposal was regressive, the plain language of the proposed agreement is otherwise – in several respects you simply deleted certain language to which we previously agreed. Your proffered rationale for most of your changes was that the Union "no longer trusts us". This may be your reason, but it does not change the regressive nature of the proposal.

Nevertheless, we did not think it would have been productive simply to ignore what you gave us, so we took the time to walk you through the proposed Yeadon contract, nearly section by section, pointing out the regressive nature of your position, including but not limited to the Union's removal of important discretionary language reserved for the Company; insertion of a "good cause" provision in place of the previously-agreed disciplinary provisions in the Company handbook; insertion of a standard Grievance & Arbitration provision in place of the previously agreed mediation provision which the parties already have utilized successfully; return to your 2007 position of position-specific wages (and lock step increases) when you had conceded that point in July 2009; and increase of the amount you sought to have put in the Union's health care fund.

In addition, it is worth noting that while you on the one hand vehemently denied at the table that the parties were ever at impasse or even close to an agreement in 2009, Lou Agre remarked that we "should have taken that deal back in 2009." The impasse also is bolstered by your own August 27 letter, in the record before the Labor Board, admitting that the parties were only "pennies" apart from an agreement.

Whether or not you now admit that the Union agreed to the non-economic portion of the July 2009 proposal, or that we reached impasse, the fact remains that the document memorialized our position after months of bargaining and testing each other's positions. Absent some economic concession from the Union, which was not evident in your Yeadon proposal, there is no reason for the Company to retreat from these already agreed-to points. To go back to "square one" as you have done simply forces us to "do over" all that we have done. That is the height of regressiveness. Attached to this letter is a redline of the non-economic provisions of your recent Yeadon contract that shows the provisions to which we agreed in 2009. We hope this will be useful to you in crafting what we hope will be a proposal from the Union on Yeadon that actually moves the parties closer together. We stand ready to bargain over that contract when tendered. Certainly, if you have any questions about our redline, we will be happy to address them at our next bargaining session.

With respect to your letter of November 17, 2010, it seems as if you are requesting wage documents merely to bully and harass us. As we repeatedly have pointed out, wages for Beacon's subsidiaries other than Quality are irrelevant, because Quality never has taken the position that it is constrained by any corporate policy from entertaining any wage proposal that you make. Thus, I do not know what your letter means by Ms. Thomas's alleged comment, which she expressly denies ever making, as to the need for an overall "cost impact regarding Beacon." Rest assured that no such analysis needs to be made before we agree. Indeed, even the wages for Quality's similarly-situated non-union workers are irrelevant and do not constrain what we can do for the Union workers. However, we have provided this information in the past as a sign of our good faith. As a continuation of that good faith, we will prepare updates to the non-union wage and discipline charts we provided you previously. Given the upcoming holiday, those charts may not be available until early December.

Finally, your letter indicates that you also want to discuss 2010 and 2011 wages (we assume by this you actually mean 2010 and 2011 wage increases) and "other monetary issues." That is fine, but when bargaining begins, we expect you to make some proposal which you refused to do when we last met on this issue last April. We stand prepared to bargain over this interim issue if you make a proposal. Please let me know if you think a bargaining session on November 24th will be productive. We can start 9:30 a.m. at your Union Hall. Due to the holiday, we may need to break a bit early that day, but we can resume the following Monday, the 29th.

Very truly yours,

Hollie B Knox

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Encl.
cc: Jennifer Thomas
Jeff Metz
Shauna Keenan

Ex. 9

March 4, 2011

QUALITY
A Beacon Roofing Supply Company

VIA ELECTRONIC TRANSMISSION ONLY

Frank Bankard
International Union of Operating Engineers, Local 542
1375 Virginia Drive, Suite 100
Fort Washington, Pennsylvania 19034

Re: Quality Roofing Supply Company

Dear Frank:

This responds to your February 27 letter.

We are glad that you are willing to meet in Center City as we have several times in the past. As to meeting times, we historically have met at 10:00 a.m. to enable us to travel in one day, and always have had time to break for lunch and still have a full day of bargaining. As for dates, we are not available on March 18, but offer March 21 in Center City and March 30 in Pennsauken. Please let us know your availability for both dates as soon as possible.

Turning to your information requests:

1. As to your request for compensation information for non-bargaining unit employees, this compensation information is not relevant to whether the employees perform bargaining unit work.

2. As I have made clear to you multiple times, Pennsauken employees are governed by the 2009 Employee Guide, not the 2007 Employee Handbook. Indeed, the Receipt of Employee Guide forms included with the Pennsauken bargaining unit members' personnel files state that the 2009 Employee Guide replaces and supersedes any and all prior employee handbooks or guides. Notwithstanding that your request that Quality reproduce the 2009 Employee Guide is unreasonable, in the interest of cooperation, it is attached as Exhibit A. The drug and alcohol testing policy is attached as Exhibit B.

3. As to bonuses and wage increases, we are not required to answer what amounts to written interrogatories. Regardless, we have never taken the position that we are constrained by any policy in considering the Union's proposals for wage increases or bonuses. Moreover, you have already made an economic proposal for the Pennsauken bargaining unit so it is unclear why such information is necessary to formulate an economic proposal.

4. As to your continued request for fringe benefit plan information, we have produced all current benefit information that is in our possession.

5. As for the Pennsauken job advertisements, we objected to your request because we do not believe that we are required to provide you with the job advertisements for non-bargaining unit positions. However, to remove any issue, we decided not to stand on that objection and have provided you the job advertisements for all positions at Pennsauken in the last three years.

Regards,

Jennifer Thomas
Staff Counsel